

DATE: May 29, 1998
CASE NO. 97-INA-145

In the Matter of:

PORTLAND CONSTRUCTION COMPANY, INC.
Employer

On Behalf of:

ELAHE-MOHAMMADI JONEIDI
Alien

APPEARANCE: James L. Rosenberg, Esq.
For the Employer

Before: Holmes, Vittone and Wood
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from the Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of an application for labor certification. The certification of aliens for permanent employment is governed by Section 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. §1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 C.F.R. Part 656.

Under §212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and

the Employer's request for review, as contained in the Appeal File ("AF"), and any written arguments of the parties. 20 C.F.R. §656.27(c).

Statement of the Case

On September 2, 1993, the Employer, Portland Construction Company, Inc., filed an application for labor certification to enable the Alien, Elahe-Mohammadi Joneidi, to fill the position of "Cartographer/Topographer," which was classified by the local job service as "Photogrammetrist." The job duties for the position were described as follows:

The occupant of this position will be required to create maps and charts of proposed construction sites. Certain maps will require drawing geographical areas showing surface features such as rivers, lakes, roads and other existing natural features. The occupant will use available data source, survey data, photos. Will be required to ascertain legal boundaries and other customer requests. Certain projects will require occupant to accompany the survey crew in the field.

(AF 38).

The stated requirements for the position are: a B.A. degree in the field of cartographer/topographer and 2 years of experience in the job offered (AF 38).

On January 13, 1995, this application for labor certification was remanded to the Investigations Unit of the Employment Development Department (hereinafter "EDD"), in order to determine if this is a viable business and if there is a bona fide full-time job opening (AF 35-36).

Subsequently, the CO issued a Notice of Findings on January 30, 1996 (AF 29-31), in which he proposed to deny certification on the grounds, *inter alia*, that the Employer failed to establish that there is a bona fide job opening available, in violation of the provisions of §656.20(c)(8) and §656.50. [now appearing at §656.3]

The CO granted the Employer's request for an extension of time to rebut the Notice of Findings (AF 20-28). Thereafter, the Employer submitted its rebuttal on March 29, 1996 (AF 6-19). The CO found the rebuttal unpersuasive and issued a Final Determination on June 6, 1996, denying certification on the same grounds (AF 4-5).

On June 19, 1996, the Employer filed a request for review of the denial of certification (AF 1-3). Subsequently, the CO forwarded this matter to the Board of Alien Labor Certification Appeals for review.

Discussion

In the Notice of Findings, the CO questioned the validity of the job opportunity at issue. In pertinent part, the CO stated:

Based on information provided by the California Employment Development Department, Portland Construction Company, Inc. is not a registered tax-paying entity with the State of California. A check of EDD records revealed that there is a registration found for a business named **Abou Co.** This business registered in 1988 with **Aboutorab Aboutorabi** as the President. **Abou Torabi, President**, signed the labor certification application for Portland Construction Company. Abou Co. reports no employees.

There is an expired contractor's license under the name of **Portland Construction Company, Inc.** with Abu Torabi listed as owner. The license has no contractors bond nor does it have a workers compensation policy. The license expired February 28, 1993. Portland Construction Company, Inc., has no telephone directory listing in the white or yellow pages.

Although the employer indicated that Portland Construction Co., Inc. is temporarily conducting its operation through Best Way Construction, this temporary business operation does not substantiate that there is a bona fide job opening for a cartographer; that Portland Construction Co., Inc., has a current contractors license or workmens (sic) compensation policy; that Portland Construction Co., Inc., is a registered tax-paying entity with the State of California. The employer and his attorney were asked for this documentation in the remand notice dated April 26, 1996.

(AF 30).

The CO directed the Employer to take the following corrective actions, in order to cure the cited deficiencies:

The employer must submit documentation to substantiate that Portland Construction Co., Inc. is currently registered with the State of California as a tax-paying entity; current business registration; current contractors license with workmens (sic) compensation policy; current job site where business is being conducted and performed in land development/construction; and examples of cartographic work performed by Portland Construction Co., Inc.

How many employees are at this location and in what capacity are they employed? How has the employer performed the job duties of the position prior to hiring and petitioning for the alien?

In addition, the employer must submit written documentation that specifies the

names and addresses of each corporate officer and member at the time the application was in process, their relationship to the alien, if any, and the financial interest of each member and the duties and responsibilities of each person involved in the corporation. Does the alien have a financial interest in the corporation?

Absent documentation to the contrary, there does not appear to be a bona fide job opening to which U.S. workers can be referred, considered and hired. No labor certification can be granted.

(AF 30-31).

The Employer's rebuttal to the Notice of Findings consists of a letter, dated March 29, 1996, signed by its attorney and Abu Torabi, President (AF 6-7), the Articles of Incorporation of Best Way Construction Company (AF 8-11), and the "Action by the Sole Incorporator of Best Way Construction Company" (AF 19).

The letter signed by Employer's attorney and Abu Torabi, President, states: 1. Portland Construction Co. began a subsidiary business known as Best Way Construction Company, on May 12, 1994 following the 1994 earthquake in the Los Angeles area. 2. "The documentation requested by DOL has been ordered by way of transferring the business license, contractors license and workman compensation insurance policy. Upon receipt of the subject documents they will be forwarded to DOL." 3. The work sites are in southern California. The cartographic work includes both commercial and residential enterprises. There are six employees, whose capacities include marketing agents, engineers, surveyors, administrators, and secretaries. 4. Prior to hiring the alien, Employer hired outside personnel on a piece meal basis. However, "this arrangement no longer is functional because the employer is losing many contracts due to the lack of control and commitment of outside cartographer." 5. The Alien is not related to the corporate officers and has no financial interest in either Portland Construction Co. or Best Way Construction Co.

The Articles of Incorporation of Best Way Construction Company, reveal that the latter was incorporated on May 12, 1994 (AF 8-11); and the "Action by the Sole Incorporator of Best Way Construction Company," dated May 16, 1994, indicates that Abu Torabi is President and Chief Financial Officer and Ezatsadat Torabi Secretary of the company (AF 19).

In the Final Determination, the CO found the Employer's rebuttal to be inadequate. In pertinent part, the CO stated:

...the rebuttal documentation submitted does not substantiate that there is a bona fide job opening for a cartographer at Portland Construction or at Best Way Construction; that Portland Construction or Best Way Construction has a current contractor's license or workmen's compensation policy; that Portland Construction or Best Way are registered tax-paying entities within the State of California.
(Note: This documentation was previously requested in an Employment

Development Department remand notice dated April 26, 1996).

...The Articles of Incorporation submitted by the employer only indicated that Best Way Construction was incorporated on May 12, 1994; however, no documentation was submitted to identify Best Way Construction's business address/location or nature of business.

There does not appear to be a bona fide job opening to which U.S. workers can be referred, considered and hired. No labor certification can be granted.

(AF 5). We agree.

In the present case, the Employer's "rebuttal" primarily consists of a mere statement co-signed by Employer's attorney and its President that a full-time cartographer is needed, but fails to provide the documentation which had been reasonably requested by the CO in the Notice of Findings.

In view of the foregoing, we find that labor certification was properly denied.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

For the Panel:

JOHN C. HOLMES
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002**

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within ten days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.

